

STATE OF TENNESSEE

Office of the Attorney General



2004 MAR 26 PM 2:11

T.R.A. DOCKET ROOM

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

March 26, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket 01-00704, United Cities Gas/Atmos Incentive Plan Account Audit

Docket 02-00850, United Cities Gas/Atmos, Petition to Amend PBR Mechanism Rider

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division of the Office of the Attorney General's Motion for Extension of Time to Respond to the Motion to Consolidate and for Approval of Settlement Agreement filed by Atmos Energy Corporation and the Staff of the Tennessee Regulatory Authority. Kindly file the attached in the above referenced dockets. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy C. Phillips".

Timothy C. Phillips
Assistant Attorney General
(615)741-8700

Enclosures

cc: All Parties of Record

74021

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

| | | |
|-------------------------------------------------|---|-------------------|
| IN RE: |) | |
| |) | |
| UNITED CITIES GAS COMPANY, a Division of |) | DOCKET NO. |
| ATMOS ENERGY CORPORATION |) | 01-00704 |
| INCENTIVE PLAN ACCOUNT (IPA) AUDIT |) | |

| | | |
|-------------------------------------------------|---|-------------------|
| IN RE: |) | |
| |) | |
| UNITED CITIES GAS COMPANY, a Division of |) | DOCKET NO. |
| ATMOS ENERGY CORPORATION, PETITION |) | 02-00850 |
| TO AMEND THE PERFORMANCE BASED |) | |
| RATEMAKING MECHANISM RIDER |) | |

**CONSUMER ADVOCATE’S MOTION FOR EXTENSION OF TIME TO RESPOND TO
THE MOTION TO CONSOLIDATE AND FOR APPROVAL OF SETTLEMENT
AGREEMENT FILED BY ATMOS ENERGY CORPORATION AND THE STAFF OF
THE TENNESSEE REGULATORY AUTHORITY**

Comes now Paul G. Summers, the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division (“Consumer Advocate”), and moves for an extension of time to respond to the *Motion to Consolidate and for Approval of Settlement Agreement* filed on March 8, 2004. The Consumer Advocate respectfully objects to the motion seeking approval of the proposed settlement agreement between Atmos Energy Corporation (“Atmos”) and the Staff of the Tennessee Regulatory Authority (“Staff”). The Consumer Advocate does not object to consolidation of these matters.

INTRODUCTION

In support of its opposition and request for extension of time to respond to the motion for

approval of the proposed settlement agreement, the Consumer Advocate requests that the Tennessee Regulatory Authority (“Authority”) take note that the motion seeking approval of the settlement is devoid of citation to the record in this matter in support of the effort by Staff and Atmos to drastically change the mode and manner of the operation of Atmos’ Performance Based Ratemaking (“PBR”) Plan. Further, the motion does not contain any substantive discussion of why the Authority should approve these changes to the PBR Plan. The motion appears to be loosely predicated on the assertions that: Staff “agrees with, supports and recommends the Transportation Index Factor (“TIF”); the TIF “will provide a more detailed and specific method for calculations of savings from discounted transportation contracts under the PBR Plan mechanism”; “the TIF tariff is consistent with the intent and scope of the PBR Plan”; and the tariff is “beneficial to consumers.”

ARGUMENT

Even in the absence of a supporting record, the Staff and Atmos contend that the proposed settlement agreement “is necessary and proper for the public convenience and properly serves the public interest.” The standard for approval of the motion is not whether Staff and Atmos are convinced that this proposed settlement serves the public interest, but have Staff and Atmos made the requisite demonstration to the Authority that the proposed settlement serves the public interest.

Given the state of the record in this matter, this motion should be summarily denied. Should Staff and Atmos wish to pursue approval of this matter there are several matters of concern that should be addressed. First, Staff and Atmos should present supporting argument, marshaling the necessary material facts, applicable law and pertinent policy concerns, demonstrating why the Authority should stray so significantly from the PBR Plan approved for

Atmos in TRA Docket No. 97-01364. The filing should demonstrate at least some underlying support for the assertions made in the motion for approval filed by Staff and Atmos. Further, the Staff and Atmos should explain how approval of a tariff filed in August, 2002, but given an effective date of April 1, 2001 does not result in retroactive ratemaking. The Staff and Atmos ignore the difficult, actually impossible, task of demonstrating at what point the Authority approved the use of negotiated transportation "savings" in administering the PBR Plan, which is the heart of the issue in TRA Docket No. 01-00704.

It is of significant importance that Staff and Atmos be required to explain why it would be appropriate that the State of Tennessee pursue a path regarding transportation contracts which is possibly incongruent with the approach of the Federal Energy Regulatory Commission ("FERC") described in its July 25, 2003 Order.¹ Review of the FERC ruling points to a clear concern with the use of transportation contracts. The settlement proposal must be reconciled with the FERC ruling.

Second, the Consumer Advocate should be permitted to assess the settlement proposal after the completion of discovery. Discovery is also vital to the Consumer Advocate's ability to thoroughly respond to the motion to approve the proposed settlement. Discovery in this matter has not been completed. Initial discovery was allowed with respect to the presentation of the Consumer Advocate's summary judgment motion. Following the ruling on the Consumer's Advocate's summary judgment motion the parties did not actively litigate this matter. Instead, for the past year, at the request of Atmos, the parties have engaged in a settlement and mediation process that has not produced an agreement acceptable to Tennessee consumers. It is

¹ Modification of Negotiated Rate Policy, Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003). A copy is attached.

troublesome that a proposed settlement providing less to consumers than Atmos offered in mediation has now been submitted to the Authority for approval without the necessary and proper supporting material.

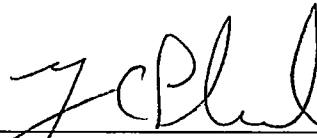
The net effect of the Consumer Advocate's participation in mediation should not be for the Consumer Advocate to be in a less favorable position than it was before it agreed to pursue mediation. Prior to mediation, the Consumer Advocate was on a track to pursue discovery and a hearing on the merits. Now, after the mediation was unsuccessful, the Staff and Atmos seek to put the Consumer Advocate, and the consumers it represents, in a less favorable position by attempting to settle this matter without the Consumer Advocate's approval. The parties should be able to return to the position occupied prior to the mediation. Otherwise, the Authority's reliance on mediation as a mechanism for resolving matters before it will be compromised. No party will voluntarily enter into mediation where the resulting process adversely effects its position as a party litigant. Prior to the mediation, the Consumer Advocate expected a hearing on the merits after a short time for preparation. Instead, the Staff and Atmos ask the Authority to rule based on unsupported assertions forged in private conferences without the scrutiny of the representative of Tennessee consumers.

Third, the hearing officer should rule on the motion filed by Atmos to exclude Dan McCormac as a witness. This motion has been pending since May 14, 2003. The Consumer Advocate has waited ten (10) months for a ruling regarding the availability of witness Dan McCormac, despite its November 21, 2004 motion requesting a ruling. Mr. McCormac's participation in this matter is important to the Consumer Advocate's ability to present opposition to the proposed settlement and for the resolution of both of these dockets based on the merits.

CONCLUSION

The foregoing considered, the Consumer Advocate requests additional time to respond to the *Motion to Consolidate and for Approval of Settlement Agreement*. The Consumer Advocate requests that prior to it filing responsive pleadings the Staff and Atmos present a proper motion with supporting material seeking approval of the proposed settlement agreement. The Consumer Advocate asks for leave to conduct discovery and for a status conference to set an appropriate schedule for the hearing of these matters based on the merits of the issues involved.

Respectfully submitted,



TIMOTHY C. PHILLIPS, B.P.R. #12751

Assistant Attorney General

Office of the Attorney General

Consumer Advocate and Protection Division

Post Office Box 20207

Nashville, Tennessee 37202-0207

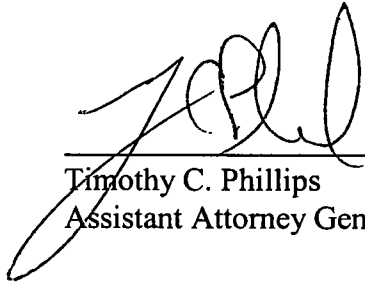
(615) 741-3533

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2004, a true and exact copy of the foregoing document has been mailed, first class U.S. postage prepaid, to the following:

Joe A. Conner, Esq.
Baker, Donelson, Bearman & Caldwell, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450-1800

Randal Gilliam, Esq.
Office of Legal Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505



Timothy C. Phillips
Assistant Attorney General

: ODMA\GRPWISE\sd05.IC01S01 JSB1 74003.1 1